DOCKET NO. HHD-CV17-6080237-S	:	SUPERIOR COURT
JOHN TILLMAN AND JUDITH TILLMAN	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
PLANNING AND ZONING COMMISSION OF THE CITY OF SHELTON	:	SEPTEMBER 26, 2019

MEMORANDUM OF DECISION

The plaintiffs, John and Judith Tillman, appeal the decision ("Decision") of defendant Planning and Zoning Commission of the City of Shelton ("Commission"), which approved an application for approval of Initial Concept Development Plans and Planned Development District Zone Change ("application") filed by defendant Shelter Ridge Associates LLC ("applicant"). The application related to a 121-acre parcel of land fronting on Bridgeport Avenue and Mill Street in the City of Shelton ("subject property"), which was zoned Light Industrial Park District at the time of the application. After six public hearings, the Commission approved the application on March 7, 2017. By approving the application, the Commission created a new zoning district and amended the Shelton zoning regulations and map to designate the subject property as a planned development district ("PDD").[1] The plaintiffs commenced this appeal on March 24, 2017, asserting that the Decision was arbitrary, illegal, and an abuse of discretion vested in the Commission. After the record and the parties' briefs were filed, the court conducted

[1] Although the Appellate Court once described a planned development district "as a creature not normally spotted in Connecticut's jurisprudential forests;" (Internal quotation marks omitted.) *Campion* v. *Board of Alderman*, 85 Conn. App. 820, 822 n.3, 859 A.2d 586 (2004), rev'd, 278 Conn. 500, 899 A.2d 542 (2006); it appears the creature has thrived in the environs of Shelton. The Commission designated the instant approved zone change as PDD #87. In its brief, the applicant represents that there are over ninety PDDs in Shelton.

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a hearing on the appeal on June 20, 2019.

The plaintiffs filed an affidavit (#156), establishing that they own property which abuts a portion of the subject property. Neither defendant contests that the plaintiffs are statutorily aggrieved. Accordingly, the court finds that the plaintiffs are statutorily aggrieved pursuant to General Statutes § 8-8 (a) (1).

The record before this court supports the following facts. The source of Shelton's zoning power is General Statutes § 8-2. Pursuant to that enabling legislation, Shelton adopted zoning regulations authorizing the creation of PDDs. See Shelton Zoning Regs., c. III, § 34. The regulations indicate that PDDs are intended to "encourage and accommodate unique and desirable development that will be consistent with the long range orderly development of an area but is not accommodated by the established conventional zoning of that area . . . . Each [PDD] is another independent zoning district created to accomplish a specific purpose, complete with its unique and narrowly drawn permitted uses and bulk standards and other applicable zoning provisions . . . ." Id., § 34.1. To this end, the PDD regulations "permit modification of the strict application of the standards and provisions" of the city's zoning regulations; Id., § 34.1; and thus allow applicants to seek approval of proposed uses and standards applicable only to the property that is the subject of the application. In Shelton, there are more than seventy-five PDDs, each with its own set of permitted uses and standards. See id., § 34, Appendix ("Inventory of Planned Development Districts").

In an application dated March 16, 2016, the applicant requested the creation of a PDD for approximately 124 acres of vacant land zoned predominately Light Industrial Park with a small portion zoned R-1, to accommodate a mixed-use development proposal consisting of retail,

commercial, medical and professional offices, food services and luxury multifamily residential apartments together with supporting parking facilities and approximately 24 acres of dedicated open space. (ROR 1, 2, 13) The PDD would consist of five distinct and separate development areas, designated as parcels A through E. (ROR 2, 13)

The record reveals that the Commission had before it some sixty-five exhibits, including a full engineering report (ROR 4); a 900-page traffic impact study (ROR 5), supplemented by a revision to address certain questions from the Commission (ROR 28); a retail demand study (ROR 26) and the blowup of the rings and drive times related to the retail analysis (ROR 36); an environmental report (ROR 25, supplemented by ROR 49); and a traffic peer review (ROR 50). The applicant also presented numerous articles and data related to existing apartment developments, parking, school age children, fire and safety, and downtown development. (ROR 30-31, 35, 37, 52) All of the applicant's submissions were supplemented by the testimony of the authors of the reports.

The Commission held six public hearings on the application – April 27, May 31, June 28, July 27, September 7, and September 21, 2016. (ROR 66-71) There was substantial public opposition to the application, which included significant concerns over the environmental impact of the PDD. (ROR 13) The applicant responded to these concerns. (ROR 13) On March 7, 2017, by way of a twenty-four page resolution of approval, the Commission approved the application with substantial conditions and restrictions. (ROR 13, 13a) As part of the resolution, the Commission also approved a statement of uses and standards for the PDD. (ROR 2) The resolution of approval contains a description of the project, a summary of the public hearing proceedings, comments and findings, and the reasons for approval. (ROR 13)

In the resolution of approval, the Commission made the following statements: "The petitioner has submitted a petition to establish a **Planned Development District (P.D.D.)** to accommodate a mixed use development proposal consisting of retail commercial, medical and professional offices, food services and luxury multifamily residential apartments together with supporting parking facilities and approximately 24 acres of dedicated open space, on a site of approximately 121 acres. Said site fronts on the west side of Bridgeport Avenue, north of and abutting Mill Street and with limited frontage on Buddington Road. The site is served by municipal sanitary sewers and public water supply as well as electric, gas and telephone services. The petition complies with applicable zoning requirements except as may be amended by said proposed **P.D.D.** and the Final Statement of Uses and Standards applicable thereto and is consistent with the intent and purpose of a P.D.D. . . .

"The site is characterized by steep to variable topography, sloping steeply up from both Bridgeport Avenue and Mill Street with visible rock outcroppings and a significant delineated inland wetland area adjacent to the westerly property line. The site is bisected by overhead power lines of the Connecticut Light and Power Company as well as an underground gas transmission line of Iroquois Gas. To adapt to the natural topography of the site and minimize massive rock excavation needed to prepare the site for development, the site is planned as a series of smaller development parcels separated by topographical breaks, with each parcel served from an internal road system connecting to Bridgeport Avenue at two (2) locations. The overall **Initial Development Concept Plan** for the development proposal indicates five (5) such distinct land use and development areas. Two (2) closest to Bridgeport Avenue, but situated some 40 to 80 feet above Bridgeport Avenue pavement, are planned for retail commercial use. In the interior of

the site, one area is planned for mixed retail, office and food services, another for medical and professional offices and the final one for a multi-story residential structure housing **411** rental apartments with a related supporting parking structure and recreation facilities. Steep, vegetated slopes protect Mill Street, a scenic road, while topography, wetlands and dedicated open space protect the westerly boundary of the site. Setbacks, open space and topography buffer the northerly boundary. . . . In an attempt avoid the costs associated with massive site excavation and rock removal needed to bring large areas of the site down to street level to accommodate typical LIP development, the proposed Initial Development Concept Plan seek to minimize such activities by constructing an internal access road from Bridgeport Avenue that can then serve some five (5) individual development parcels, each of which can be graded to better adapt to existing topography." (Emphasis in original.) (ROR 13)

The Commission's stated reasons for adopting the zone change are summarized as follows: (1) The ability to develop the subject property for light industrial and/or major office building development, as envisioned by the city's adopted conservation plan, has been precluded by difficult physical site features coupled with marketing constraints, as well as less costly alternatives to new construction; (2) the subject property can be improved to accommodate the proposed mixed-use development in a manner that minimizes intrusion on neighboring areas; (3) the applicant will have to significantly improve and upgrade the relevant roadway, which will preserve and enhance its level of service beyond what currently exists; (4) the change will accommodate smaller development parcels that better adapt to the variable site topography, will continue a quality of development that will compliment on-going enhancements in the area and will contribute a significant tax gain to the city; (5) the change will accommodate the proposed

mixed-use development in a manner that cannot be applied by conventional zones; (6) the change is consistent with the comprehensive plan of zoning for the area and does not conflict with the conservation plan or an updated plan for the Route 8 corridor. (ROR 13)

I

On appeal, the plaintiffs make three main arguments in support of their position that the Decision was arbitrary, illegal, and an abuse of discretion vested in the Commission: (A) The creation of a PDD is not authorized by § 8-2; (B) even if a PDD was authorized, the one at issue in this appeal is invalid because it (1) violates the uniformity requirement in § 8-2, (2) allows the Commission to vary its zoning standards, (3) unlawfully establishes a subdivision of land, and (4) did not actually affect a zone change or text amendment or other decision the Commission was authorized to make; and (C) the PDD fails to sufficiently protect environmental resources and the public health in violation of the city's regulations and plan of conservation and development. This court disagrees with the plaintiffs and dismisses the appeal.

A

To determine whether the Commission properly was empowered to create the PDD at issue, this court must search for statutory authority for the enactment of § 34 of the city's zoning regulations. See *MacKenzie* v. *Planning & Zoning Commission*, 146 Conn. App. 406, 426, 77 A.3d 904 (2013). Because the source of its zoning power is § 8-2, the Commission can only exercise such power as has been validly conferred upon it by that statute. See *Eden* v. *Town Plan & Zoning Commission*, 139 Conn. 59, 63, 89 A.2d 746 (1952). The question of whether § 8-2 provides statutory authority for the enactment of § 34 is one of law over which this court exercises plenary review. See *Campion* v. *Board of Aldermen*, 278 Conn. 500, 509, 899 A.2d

542 (2006).

Section 8-2 (a) provides in relevant part that local zoning commissions are "authorized to regulate . . . the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . . ." The arguments of both parties with regard to whether this language authorizes the creation of PDDs focus on the decision in *Campion* v. *Board of Aldermen*, supra, 278 Conn. 500, wherein our Supreme Court concluded that the city of New Haven had the necessary enabling authority to enact an ordinance that provided for the creation of PDDs. Because the source of zoning power at issue in *Campion* was a special act;[2] see id., 510; the plaintiffs argue that *Campion* is limited to its facts and its holding does not extend to PDD regulations enacted by municipalities that derive their zoning authority from § 8-2.

It is well settled that the power of a local zoning authority to adopt regulations is limited by the terms of its enabling legislation. See *Campion* v. *Board of Aldermen*, supra, 278 Conn. 511. At issue in *Campion* was whether New Haven's special act permitted the local zoning authority to enact an ordinance that allowed for the creation of PDDs. See id., 503. In analyzing this issue, the court drew guidance from its decision in *Sheridan* v. *Planning Board*, 159 Conn. 1, 266 A.2d 396 (1969), which addressed a similar issue – i.e., whether the creation of floating

[2] "[T]wo bodies of legislation pertaining to zoning have developed over the years: the one, contained in the General Statutes; the other, conferred by special act and relevant only to the particular city or town in whose behalf the legislation was adopted." (Internal quotation marks omitted.) Id., 511.

zones was authorized by the special act applicable to the city of Stamford. See *Campion* v. *Board of Aldermen*, supra, 515-18. In explaining the relevance of *Sheridan*, the *Campion* court explained that the creation of PDDs is "comparable to the creation of floating zones,"[3] a practice which the court has "deemed authorized by enabling legislation similar to [New Haven's special act]." *Campion* v. *Board of Aldermen*, supra, 515. "Similar to a floating zone . . . once a planned development district is approved, the property to which it applies is removed from the existing zoning district and an entirely new zoning district is created." Id., 523; see id., 517-18 (floating zones and PDDs effectively "alter[] the zone boundaries of [an] area by carving a new zone out of an existing one" [internal quotation marks omitted]). Floating zones and PDDs both represent "legitimate legislative act[s] by [cities] to regulate growth and meet the need for flexibility in modern zoning ordinances."[4] (Internal quotation marks omitted.) Id., 518.

The *Sheridan* court, "in searching for enabling authority for [the] floating zone

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[3] "A floating zone is a special detailed use district of undetermined location in which the proposed kind, size and form of structures must be preapproved. It is legislatively predeemed compatible with the area in which it eventually locates if specified standards are met and the particular application is not unreasonable. . . . [I]t has no defined boundaries and is said to float over the entire area where it may eventually be established." (Internal quotation marks omitted.) Id., 515 n.11. Like a PDD, "the floating zone is the product of legislative action" and provides a zoning authority with more control over changes. *Sheridan* v. *Planning Board*, 159 Conn. 1, 16, 266 A.2d 396 (1969).

[4] The *Campion* court rejected arguments that a PDD is materially different from a floating zone in that a floating zone "has established standards for the kind, size and form of the structures eventually to be applied to a particular area" whereas the New Haven ordinance did not "contain uniform and identified standards that would apply to each planned development district . . . ." *Campion* v. *Board of Aldermen*, supra, 278 Conn. 519. The court explained that such a difference did not "warrant different treatment when searching for enabling authority . . . ." Id. Rather, the relevance in the comparison for purpose of enabling authority was that both had the effect of "alter[ing] the zone boundaries of [an] area by carving a new zone out of an existing one." (Internal quotation marks omitted.) Id., 518-19; see id., 515 (relevant inquiry is whether special act "authorizes the city to create new zones, as well as to make alterations to the zones previously created").

regulation," centered its analysis "on the substance and function of the regulation as it related to the broad authority conferred by [Stamford's] special act." *Campion* v. *Board of Aldermen*, supra, 278 Conn. 516. The *Sheridan* court explained that "[i]n creating a floating zone, and in applying it to a particular area, the Stamford zoning board [was] regulating the location and use of buildings and land . . . ." Id. The court concluded that this manner of regulation was clearly permitted by Stamford's special act, which, similar to § 8-2, provided that the zoning board had authority to regulate the "height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and the height, size, location and character of advertising signs and billboards." (Internal quotation marks omitted.) *Sheridan* v. *Planning Board*, supra, 17-18; see *Campion* v. *Board of Aldermen*, supra, 516. Notably, the *Sheridan* court paralleled the breadth of the special act to that of § 8-2, concluding that both were "sufficiently broad to permit the creation of floating zones." *Sheridan* v. *Planning Board*, supra, 18.

The *Campion* court thus gleaned from *Sheridan* that the relevant question before it was not whether the special act authorized PDDs "by name, but whether it authorizes the city to create new zones, as well as to make alterations to the zones previously created." *Campion* v. *Board of Aldermen*, supra, 278 Conn. 515; see id., 514 ("The approval of a planned development district is not different from the creation of any other new zoning district . . . ."). Based on its conclusion in *Sheridan* "with respect to the permissibility of floating zones" the *Campion* court concluded that the language of New Haven's special act was "sufficiently broad" to permit the creation of PDDs. *Campion* v. *Board of Aldermen*, supra, 518. The relevant language of the New

Haven special act authorized the board of aldermen "to divide the city of New Haven into districts of such number, shape and area as may be best suited to carry out the provisions of [the special] act. . . . The regulations shall be uniform for each class of buildings or structures throughout any district. Regulations in one or more districts may differ from those in another district. . . . The regulations imposed and the districts created under the provisions of this act may be changed or altered from time to time by ordinance, but no such change or alteration shall be made until the proposed change shall have been referred to the zoning commission for a hearing . . . [and the commission has reported] to said board of aldermen its recommendations in the matter . . . ." (Internal quotation marks omitted.) Id., 512 n.8, 514.

Turning to the plaintiffs' argument in present case, this court concludes that *Campion* is not limited to its facts.[5] Although *Campion* and *Sheridan* interpreted zoning authority derived from special acts, the analyses and holdings of those cases are based on the language of the special acts, not the fact that the language was contained in a special act. This court further concludes that *Campion* supports the conclusion that § 8-2 authorizes the creation of PDDs. Indeed, such a conclusion is implicit in the court's analysis: Because floating zones are authorized by language materially similar to § 8-2 and, for purposes of searching for enabling authority, floating zones and PDDs are functionally equivalent, it logically follows then that

[5] In their brief, the plaintiffs cite to the Connecticut Practice Series: Land Use Law and Practice, wherein Judge Fuller opines on *Campion*: "In spite of the broad and permissive statements concerning the authority of the board of aldermen when acting in a legislative capacity on establishing PDDs, the case seems limited on its facts to the provisions of the New Haven special act and should not be construed as allowing PDDs to municipalities acting under the general statutes, which do not contain similar zoning authorization." R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 4:5, p. 70. This court respectfully disagrees with Judge Fuller.

PDDs would be authorized by § 8-2. This court's conclusion, however, does not rest on this chain of inferences. *Campion* dictates that to determine whether § 8-2 enables the creation of PDDs, the relevant inquiry is whether the statute authorizes zoning authorities to create new zones, as well as to make alterations to the zones previously created. See *Campion* v. *Board of Aldermen*, supra, 278 Conn. 515, 517-18. Section 8-2 (a) authorizes a zoning commission to regulate "the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . . and the height, size, location, brightness and illumination of advertising signs and billboards." Because this language permits a zoning authority to regulate the location and use of buildings and land, it thus authorizes the creation of new zones and alterations to zones previously created. See, e.g., *Sheridan* v. *Planning Board*, supra, 159 Conn. 17-18. Accordingly, it permits the creation of PDDs. See *Campion* v. *Board of Aldermen*, supra.

The plaintiffs' argument that the analysis of the Appellate Court in *Campion* is more appropriately applied to decisions involving the exercise of zoning powers conferred by statute is unavailing. Not only is this court bound by Supreme Court precedent; see *Stuart* v. *Stuart*, 297 Conn. 26, 45-46, 996 A.2d 259 (2010); which, in this case, reversed the Appellate Court, but the point relied on by the plaintiffs was explicitly addressed and dismissed by the Supreme Court. Specifically, the plaintiffs would have this court rely on the conclusion by the Appellate Court that PDDs were not authorized under the New Haven "special act or the broad language contained in General Statutes § 8-2" because the nature of PDDs would cause "an abandonment

of Euclidian district zoning, which forms the basis and authority for the [New Haven special act]." *Campion* v. *Board of Alderman*, 85 Conn. App. 820, 853, 859 A.2d 586, 605 (2004), rev'd, 278 Conn. 500, 899 A.2d 542 (2006). Our Supreme Court expressly disavowed such a conclusion, stating that "we never have held, and we decline to do so now, that zoning ordinances must be judged by the standards of traditional Euclidean zoning." *Campion* v. *Board of Aldermen*, supra, 278 Conn. 529-30.

The court is also not persuaded by the plaintiffs' argument that the enactment of General Statutes § 8-2m[6] is evidence that PDDs are not authorized under § 8-2. Section 8-2m, enacted in direct response to the Appellate Court's decision in *Campion*, is "special legislation" applicable only to New Haven that effectively, through the adoption of a general statute, amended the New Haven special act at issue in *Campion*.[7] See *Price* v. *Planning & Zoning Commission*, Superior

[6] Section 8-2m provides that "[t]he zoning authority of any municipality that (1) was incorporated in 1784, (2) has a mayor and board of alderman form of government, and (3) exercises zoning power pursuant to a special act, may provide for floating and overlay zones and flexible zoning districts, including, but not limited to, planned development districts, planned development units, special design districts and planned area developments. The regulations shall establish standards for such zones and districts. Flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district. Such regulations shall not authorize the expansion of a pre-existing, nonconforming use. Notwithstanding the provisions of this section, no planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone."

[7] "Senator Looney, a resident of New Haven's eastern shore, who has represented the area as a member of the General Assembly for many years, crafted general legislation, which addressed a New Haven concern, without impacting other municipalities. It is a tribute to his legal and legislative acumen that he effectively succeeded in amending the 1925 New Haven Special Act, through the adoption of a general statute." *Price* v. *Planning & Zoning Commission*, Superior Court, judicial district of Fairfield, Docket No. CV-18-6073573-S (January 31, 2019, *Radcliff, J.*)

Court, judicial district of Fairfield, Docket No. CV-18-6073573-S (January 31, 2019, *Radcliff, J.*); see also 49 S. Proc., Pt. 9, 2006 Sess., p. 97-98, remarks of Senator Martin M. Looney (legislation "deals with a situation in the City of New Haven, reaction to a decision last year and the State Appellate Court concerning the issue of planned development districts and the absence of sufficient objective standards for the provision and creation of those kinds of districts."); Id., p. 99, remarks of Senator Toni N. Harp ("This has been a big issue in New Haven . . . and clarifies what the City of New Haven can do relative to planned development districts . . ."). The Amendment from which § 8-2m resulted was adopted before the Supreme Court decided the appeal in *Campion*. See *Price* v. *Planning & Zoning Commission*, supra. In light of the reason for the enactment of § 8-2m and the Supreme Court's subsequent reversal of the Appellate Court's decision in *Campion*, this court concludes that that § 8-2m has no bearing on whether § 8-2 confers upon non-special act municipalities the authority to create PDDs.

The plaintiffs' final argument is that § 8-2 cannot be interpreted to permit the creation of PDDs because PDDs run afoul of the statute's uniformity requirement. According to the plaintiffs, "[i]t would not be logically consistent to hold that it is unlawful for zoning authorities to adopt regulations that allow for the variation of permitted uses and standards on an application-by-application basis, while also holding that it is lawful for a zoning commission to adopt zoning regulations that allow the commission to approve unique uses and standards for particular parcels of land on an application-by-application basis." This argument, although superficially attractive, must also fail because uniformity requires only "*intradistrict* uniformity . . . not uniformity among all districts in a given town." (Emphasis in original; internal quotation marks omitted.) *Mackenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 431.

PDDs are bound by the uniformity requirement of § 8-2, which requires that zoning "regulations shall be uniform for each class or kind of buildings, structures or use of land throughout *each district*, but the regulations in one district may differ from those in another district." (Emphasis added.) General Statutes § 8-2 (a). This uniformity requirement "represents a reenactment in statutory form of the general principle underlying the equal protection clause – that all land in similar circumstances should be zoned alike."[8] (Internal quotation marks omitted.) *Mackenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 432. Thus, this statutory imperative is satisfied when a district is "uniform within itself." *Campion* v. *Board of Aldermen*, supra, 278 Conn. 524. The use of PDDs as zoning devices satisfies this intradistrict uniformity requirement because, once approved, "the property to which it applies is removed from the existing zoning district and an entirely new zoning district is created. . . . [O]nce the new zoning district is created, the [PDD] only incorporates characteristics that are consistent with the new district's regulations." Id., 523-24. And, "[t]he fact that the application pertains to one individual landowner's parcel of property is irrelevant" in determining whether the uniformity requirement has been satisfied. Id., 523.

B

Having concluded that § 8-2 authorizes the creation of PDDs, the court turns next to the plaintiffs' arguments that the PDD at issue is invalid because it (1) violates the uniformity

[8] The uniformity requirement "assure[s] property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike with provision for relief in cases of exceptional difficulty or unusual hardship by action of the zoning board of appeals." (Internal quotation marks omitted.) *Mackenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 431.

requirement in § 8-2, (2) allows the Commission to vary its zoning standards, (3) unlawfully establishes a subdivision of land, and (4) did not actually affect a zone change or text amendment or other decision the Commission was authorized to make.

The plaintiffs' challenge to the legality or interpretation of § 34 of Shelton's zoning regulations is a question of law over which this court exercises plenary review. See *MacKenzie v. Planning & Zoning Commission*, supra, 146 Conn App. 424-25. The court concludes that § 34 contains sufficient standards so as to comply with the uniformity requirement set forth in § 8-2. The uniformity of the standards within the PDD itself are explicitly required by the statement of uses and standards approved by the Commission and made part of the zone text change. (ROR 2, 13) That statement contains a detailed listing of permitted and prohibited uses on the parcels, as well as a very specific schedule of the "bulk standards" applicable to each parcel.[9] The standards

[9] 5. PERMITTED USES: The following uses shall be the only uses permitted within this Planned Development District:

a. Buildings, uses and facilities of the City of Shelton.

b. Retail Parcels A and B:

i. Full service food super market with accessary uses normally related thereto when conducted within the limits of the principal use area.

ii. Stores where goods are sold or services rendered primarily at retail, except as specifically prohibited herein.

iii. Full service sit down restaurants serving alcohol with incidental take-out service.

iv. Restaurants with take out service and drive-up service windows when in an appropriate location as approved by the Commission.

v. Business and professional offices.

vi. Banks and other financial institutions, including a drive thru for teller/ATM transactions when in an appropriate location as approved by the Commission.

vii. Physical fitness centers.

viii. Notwithstanding the above, the following list of uses are prohibited as principal uses:

(1) Tattoo, body piercing and similar establishments;

(2) Sale and/or repair of firearms;
(3) Consignment and resale outlets and swap shops;
(4) Pawn shops;
(5) Storefront check cashing businesses;
(6) Fleet storage, parking and/or maintenance of livery and/or rental vehicles and/or equipment.

ix. Except as set forth above, drive up service windows are specifically prohibited, unless authorized by the Commission, subject to detailed review of location, impacts on site circulation and congestion and other potentially negative impacts on site an[d] neighboring uses.

c. Retail Parcel C:
   i. Stores where goods are sold or services rendered primarily at retail.
   ii. Restaurants with take-out service and drive-up service windows when in an appropriate location as approved by the commission.
   iii. Business and professional offices.
   iv. Banks and other financial institutions including a drive thru for teller/ATM transactions.
   v. Physical fitness centers.
   vi. Manufacturing / Research Facilities
d. Medical and Professional Office.
e. Residential Parcel E:
   i. High Quality, luxury, multi-family rental residential at a density no greater than 375 units having no units with more than two (2) bedrooms, with specific attention to dens or office spaces with potential for occupancy as a bedroom. Not more than fifty (50%) percent of the units shall be two (2) bedroom units.
   ii. Supporting structured parking with not less than 650 spaces shall be provided, appropriately integrated with the proposed building design.
   iii. Accessory uses customary, incidental and associated to residential uses as permitted herein and for use of the residents only. Such uses may include, but not be limited to, a fitness center, pool, business center and community rooms.

6. AREA, LOCATION AND BULK STANDARDS: The following standards are based on the total project size and shall not be affected if any portion of the parcel is required to be conveyed in fee to the City of Shelton or its designee for permanent open space.

a.	Land Use Zones:	SDA/PDD
b.	Minimum PDD area	5,000,000 s.f.
c.	Minimum PDD square	2,000'
d.	Minimum parcel area	500,000 s.f.
e.	Minimum parcel square	500'
f.	Minimum PDD frontage	2,000' on Bridgeport Avenue
g.	Maximum # of stories – residential	4 (west facing)*
h.	Maximum # of stories - residential	6 (east facing)*

for the classes or kinds of buildings, structures and uses are adequate, fixed, and sufficient. See *Campion* v. *Bd. of Aldermen*, supra, 278 Conn. 524-29. And, because all of the land in the new district is owned by the same entity, there is no favoritism shown to different owners at different times. See *Mackenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 431.

This court further concludes that, contrary to the plaintiffs' argument, the Commission has not been granted the power to vary zoning regulations in violation of *MacKenzie* v. *Planning*

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i.	Maximum # of stories - office	4
j.	Maximum # of stories - commercial	3
k.	Maximum height - residential (west)	40' excluding architectural features
l.	Maximum height - residential (east)	65' excluding architectural features
m.	Maximum height - commercial/office	40'
n.	Required Setbacks – PDD	
	i. Bridgeport Avenue	60'
	ii. Mill Street	150'
	iii. Buddington Road	250'
	iv. side	40'
	v. rear	40'
o.	Required Setbacks – Parcel	
	i. Bridgeport Avenue	60'
	ii. Mill Street	150'
	iii. Buddington Road	250'
	iv. Parcel boundary or dedicated open space	40'**
	v. Proposed internal public road	50'
	vi. Conservation Easement Boundary	50'
p.	Maximum Residence District Boundary setback	50'
q.	Maximum building coverage – Parcel	25%
r.	Maximum floor area as % of Parcel area	100%
s.	Maximum total impervious lot coverage as a percent of parcel area	90%

*Subject to building design and topography considerations.
[Remaining Standards Omitted] (ROR 2)

& Zoning Commission, supra, 146 Conn App. 406. Section 34.14 of the zoning regulations, entitled "Modification of Adopted PD Districts" provides as follows: "Following a duly noticed public hearing specifically conducted for that purpose, as originally required for the adoption of said PD District, the Commission may approve a significant change to the Final Site Development Plans and/or any provision, permitted use or standard contained in the Statement of Uses and Standards. Any minor modification or adjustment to the Final Site Development Plans that does not materially change the nature, scope or intensity of said Plans may be approved administratively by the Commission as a minor site plan modification. This procedure for modification effectively precludes any need for variance relief through the Zoning Board of Appeals since any provision or standard of said PD District may be modified if required by following the procedure set forth above." Rather than reflecting the power to impermissibly vary zoning regulations, this section reflects the flexibility inherent in a PDD as a device to meet modern zoning needs. See *Campion* v. *Board of Aldermen*, supra, 278 Conn. 530. The court notes, further, that the present case involves the establishment of a PDD, not any modifications thereto and thus, the issue of whether § 34.14 has been interpreted in a fashion that impermissibly varies zoning regulations is not before this court.

With regard to the plaintiffs' remaining arguments, because the Commission, in approving the applicant's application, acted in its legislative capacity to amend its zoning regulations and create a new zoning district, its decision is "subject to the most minimal judicial review." (Internal quotation marks omitted.) *MacKenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 440. When acting in a legislative capacity, a local zoning authority "is free to amend its regulations whenever time, experience, and responsible planning for

contemporary or future conditions reasonably indicate the need for a change. . . . The discretion of a legislative body, because of its constituted role as formulator of public policy . . . is wide and liberal, and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." (Internal quotation marks omitted.) *Campion* v. *Board of Aldermen*, supra, 278 Conn. 527. "Courts will not interfere with . . . local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. . . . Within these broad parameters, [t]he test of the [legislative] action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan . . . and (2) it must be reasonably related to the normal police power purposes enumerated in [the city's enabling legislation] . . . ." (Internal quotation marks omitted.) Id.

The plaintiffs' argument that the action of the Commission approving the PDD created an unlawful subdivision is based on the assumption that the development plan divided the subject property into separate parcels, each of which would be subject to its own standards for the classes or kinds of buildings, structures and uses. There is no evidence in the record to establish that the applicant sought approval from the Commission to subdivide the subject property, or that the Commission approved a subdivision thereof. Although the Initial Concept Development Plans depict five development areas and an open space area, this depiction alone does not constitute a subdivision. As the record shows, the creation of separate development areas at differing elevations was intended to minimize the amount of excavation that would be required as a result of the topography of the subject property. And, in its reasons for approval, the Commission referred to the topography of the property, the advantages of mixed-use development, the careful control afforded by the proposed zone change, and the fact the project

was consistent with city's Plan of Conservation and Development.[10] Accordingly, the court concludes that the Commission's actions did not create an unlawful subdivision.

Finally, this court is not convinced by the plaintiffs' assertion that approval of an initial concept plan is not a zone change and, thus not authorized under Chapter 124 of the General Statutes. In light of our Supreme Court's decision in *Campion*, this court declines to adopt the conclusions contained in *Mileski* v. *Planning & Zoning Commission*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-89-030284-S (July 24, 1990, *Fuller, J.*), relied on by the plaintiffs, wherein that court found that approval of an initial concept plan under the city of

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[10] "The subject zone change is adopted for the reasons found in the discussions preceding this adoption and for the following specific reasons:

Difficult physical site features coupled with marketing constraints have precluded the ability to develop the site for light industrial and/or major office building development as envisioned by Shelton's adopted Plan of Conservation and Development. Further, it is noted that the existence of other opportunities in the LIP area provide less costly alternatives to new construction.

The subject property can be improved to accommodate the proposed mixed-use development in a manner that minimizes intrusion on neighboring areas. The inclusion of a multi-family component allows development costs to be reduced to an acceptable level of economic feasibility that does not exist without it.

The peak hour traffic impacts from the subject proposal on the heavily travelled Bridgeport Avenue (Ct. Rte. #714) will necessitate significant improvements and upgrading of Bridgeport Avenue at the developer's expense and will preserve if not enhance the level of service of the roadway beyond what exists today.

The change will accommodate smaller development Parcels that better adapt to the variable site topography, will continue a quality of development that will compliment the on-going enhancements throughout the Bridgeport Avenue/Route 8 Corridor and will contribute a significant net tax gain to the City of Shelton.

The change will accommodate the proposed mixed-use development in a manner that affords careful control, is compatible with the overall area and is adequately served by the t necessary infrastructure of roads and utilities. There is no conventional zone with sufficient controls that can be reasonably applied to accommodate the proposal without serious risk to the City.

The change is consistent with the comprehensive plan of zoning for the area and does not conflict with the Plan of Conservation and Development and the Updated Plan for the Route 8 Corridor." (ROR 13)

Shelton's zoning regulations was not a zone change. Furthermore, the plain language of the approval resolution in the present case expressly states that the Commission adopted a zone change to be known as PDD #87. (ROR 13)

C

The plaintiffs' final claim is that the Decision failed to protect environmental resources because the location of buildings in the vicinity of the ridgeline "severely impacts environmental resources held in public trust." Without elaboration, the plaintiffs also argue that the PDD creates "substantial hazards to the public health and safety by failing to provide adequate access to and from public highways for future residents, tenants and the public residing at or using the subject Property, and for access by emergency responders to proposed Parcels A through E."

Although not argued as such, this court interprets the plaintiffs' arguments to be that the Commission's determinations on these points are not supported by substantial evidence. "In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule, according to which . . . [c]onclusions reached by [a zoning] commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [commission]. . . . The question is not whether the trial court would have reached the same conclusion . . . but whether the record before the [commission] supports the decision reached. . . . If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission. . . . The agency's decision must be sustained

if an examination of the record discloses evidence that supports any one of the reasons given." (Internal quotation marks omitted.) *Cambodian Buddhist Society of Connecticut, Inc.* v. *Planning & Zoning Commission*, 285 Conn. 381, 427, 941 A.2d 868 (2008).

The record in the present case indicates that there was substantial opposition to the application. As a result, the Commission conducted six public hearings where both proponents and opponents submitted extensive testimony and numerous exhibits. As previously noted, the Commission had before it traffic studies and environmental reports, supplemented by the testimony of the authors of the reports. In its approval resolution, the Commission reviewed the substance of the comments, testimony and exhibits presented at the public hearings, specifically addressed the public opposition to the project,[11] and stated its reasons for the Decision. The

[11] The Commission specifically stated: "The public comments expressed at the hearings were predominately in opposition to the proposal, citing a number of issues and concerns. The organized non-profit group of City residents identified as 'SOS' (Save Our Shelton) as well as other residents nearby and elsewhere in Shelton, expressed a variety of concerns about the proposal. In summary, the concerns expressed included the need to protect the natural ridge line through the site, the desire for the City to purchase the property, the massive scale of the proposal, the ability of the applicant to secure retail tenants, potential adverse impacts on nearby single family homes, the visual impact on Mill Street, a designated scenic road, too many apartments already on Bridgeport Avenue, Bridgeport Avenue between Exit 12 and Exit 13 is already heavily traveled and has traffic issues that need to be addressed, Constitution Boulevard North needs to be constructed now, the emergency access drive to Buddington Road is unacceptable, all three-bedroom apartments and the assisted living component should be eliminated, the potential for serious environmental impacts to the Far Mill River, the extensive site regrading necessary to accommodate the proposal, a need to protect Old Kings Highway, old water supply wells in the area need to be protected, the architectural design of the apartment building is unacceptable and nine (9) stories is too tall, the natural gas line needs to be protected, the LIP zoning should be retained, the downtown residential apartment market needs to be protected by prohibiting any more apartments on Bridgeport Avenue and that the apartment market as well as the retail market are on the verge of collapse. To the extent possible, all of the expressed areas of concern were addressed at various levels of detail by the applicant and his specialized representatives." (ROR 13)

Commission also noted that "[t]o the extent possible, all of the expressed areas of concern were addressed at various levels of detail by the applicant and his specialized representatives." (ROR 13) And, in response to specific concerns regarding the height of buildings near the ridgeline, the Commission reduced the number of stories allowed from nine to six, and imposed a maximum height of 65 feet. (ROR 2, 13) The Commission also took public concern about traffic into consideration. (ROR 13) In its statement of reasons, the Commission stated that the zone change "is compatible with the overall area and is adequately served by the necessary infrastructure of roads and utilities." (ROR 13) This court concludes that the Commission's determination on the issues of environmental and traffic impact are supported by substantial evidence.

II

The plaintiffs have failed to establish that the Decision was illegal or contrary to law, that the Commission acted arbitrarily or in abuse of discretion, or that the Decision was not supported by substantial evidence. The appeal is dismissed.

Domnarski, J.